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12 Attorneys for Defendant
13 RAMESH "SUNNY" BALWANI

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 RAMESH "SUNNY" BALWANI,

21 Defendant.

Case No. CR-18-00258-EJD

**DEFENDANT RAMESH "SUNNY"
BALWANI'S MOTION TO CONTINUE
SENTENCING**

REDACTED FOR PUBLIC FILING

**Date: November 7, 2022
Time: 1:30 p.m.
CTRM.: 4, 5th Floor**

Hon. Edward J. Davila

NOTICE OF MOTION AND MOTION TO CONTINUE SENTENCING

PLEASE TAKE NOTICE that on November 7, 2022, at 1:30 p.m. or on such other date and time as the Court may order, in Courtroom 4 of the above-captioned Court, located at 280 South First Street, San Jose, CA 95113, before the Honorable Edward J. Davila, Defendant Ramesh “Sunny” Balwani will and hereby does respectfully move the Court to continue his sentencing date from November 15, 2022, to January 23, 2023, at 10:00 a.m. The Motion is based on the below Memorandum of Points and Authorities, the Declaration of Steven A. Cazares and attached exhibits, the record in this case, and any other matters that the Court deems appropriate.

DATED: October 24, 2022

Respectfully submitted,

ORRICK HERRINGTON & SUTCLIFFE LLP

By: /s/ Jeffrey B. Coopersmith
Jeffrey B. Coopersmith

Attorney for Defendant
RAMESH “SUNNY” BALWANI

1 **I. INTRODUCTION**

2 For the reasons discussed below, defendant Ramesh “Sunny” Balwani moves for a
3 continuance of his sentencing date, which is currently scheduled for November 15, 2022, to
4 January 23, 2023 at 10 a.m.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Moreover, after reviewing the draft PSR and analyzing the factual and legal issues in this
21 complex case, defense counsel requires additional time beyond November 15, 2022, to prepare
22 for sentencing. There are complex factual issues that require careful review of the lengthy record,
23 and legal issues including the proper loss calculation.

24 In addition, members of Mr. Balwani’s family, including his brother, niece and nephew
25 who often attended trial and reside in Ohio, plan to attend the sentencing to lend emotional
26 support to Mr. Balwani. These family members cannot travel to California in December 2022 due
27 to school examinations in the event the Court grants this motion to continue the current
28 November 15, 2022, sentencing date.

1 For all these reasons, Mr. Balwani respectfully requests a continuance of sentencing from
2 November 15, 2022, to January 23, 2023, at 10 a.m. Defense counsel met and conferred with the
3 government and disclosed the bases for the requested continuance. The government declined to
4 stipulate to the requested continuance.

5 **II. FACTUAL BACKGROUND**

6 On January 3, 2022, a jury convicted co-defendant Elizabeth Holmes of Counts 1, 6, 7,
7 and 8. Dkt. 1235. Sentencing of Ms. Holmes was initially set for September 26, 2022, Dkt. 1252,
8 and later reset twice: it is now scheduled for November 18, 2022. Dkt. 1601.

9 On July 7, 2022, a jury convicted Mr. Balwani on the twelve counts in the Third
10 Superseding Indictment. Dkt. 1507. Sentencing of Mr. Balwani is currently set for November 15,
11 2022. Dkt. 1508.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED], as well as the need
9 for defense counsel to have adequate time to prepare, establish good cause to continue the
10 November 15, 2022 sentencing date, Mr. Balwani is requesting January 23, 2023, for the
11 sentencing date because the December 5, 6, and 12, 2022 options offered to Ms. Holmes during
12 the October 3, 2022 hearing (even if still available) raise conflicts for Mr. Balwani's family who
13 want to attend his sentencing. As the Court may have observed during trial, Mr. Balwani's two
14 brothers and their families often attended trial and each plan to attend sentencing to provide
15 emotional support to Mr. Balwani. However, the elder of Mr. Balwani's two brothers, and his
16 wife and two children, who reside in Ohio, will be unable to travel to San Jose for sentencing in
17 December because Mr. Balwani's niece (at Ohio State) and nephew (a high school Junior) have
18 school exams scheduled throughout December. *See* Cazares Decl. ¶ 3. A continuance of
19 sentencing to January 23, 2023, would permit Mr. Balwani's brother and his family to attend and
20 support Mr. Balwani at the sentencing.

21 Defense counsel has conferred with opposing counsel, United States Probation Officer
22 Specialist Jessica Goldsberry, and this Court's Courtroom Deputy Clerk about the Court's
23 calendar and each confirmed availability for the proposed January 23, 2023, sentencing date.

24 III. ARGUMENT

25 Criminal Local Rule 32-2 provides that any time prior to filing the final presentence
26 report, a party may move to change the date for sentencing upon a showing of (1) good cause, (2)
27 certification of the availability for the proposed new date for opposing counsel, the assigned
28 Probation Officer, and the Court's calendar, and (3) submission of a proposed order.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] Mr. Balwani is
14 preparing for the most consequential day in his life when he will face sentencing by this Court.
15 Because this is such an important day for Mr. Balwani, he deserves to be, and counsel needs him
16 to be, [REDACTED] while preparing for sentencing. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 In addition, sentencing in this case involves alleged losses in the hundreds of millions of
24 dollars that may have a disproportionate effect on calculations under the United States Sentencing
25 Guidelines. Issues of loss causation in this case are particularly complicated by potential
26 intervening events and facts, such as Mr. Balwani's departure from Theranos in Spring 2016
27 when the laboratories were still operating and the company had approximately \$350 million of
28 investor cash on hand. Also, the record in this case is extraordinarily lengthy and defense counsel

1 requires additional time to review it and bring mitigating evidence to the Court's attention. For
2 these reasons, defense counsel requires more time to prepare for sentencing beyond the current
3 November 15, 2022, sentencing date.

4 Lastly, if the Court agrees that good cause to continue sentencing is established by the
5 above, a continuance to January 23, 2023, will permit Mr. Balwani's brother, niece and nephew
6 who reside in Ohio to attend the proceeding to provide Mr. Balwani with familial and emotional
7 support at on the most important day of Mr. Balwani's life.

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Mr. Balwani requests a continuance of his sentencing
10 date from November 15, 2022, to January 23, 2023, at 10 a.m.

11
12 DATED: October 24, 2022

Respectfully submitted,

13 ORRICK HERRINGTON & SUTCLIFFE LLP

14
15 By: /s/ Jeffrey B. Coopersmith
Jeffrey B. Coopersmith

16 Attorney for Defendant
17 RAMESH "SUNNY" BALWANI